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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/413,462 10/06/99 CARTIER

E 12906 (Y0999-

EXAMINER

MMC2/0620

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ART UNIT

PAPER NUMBER

2815

DATE MAILED:

06/20/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/413,462	Applicant(s) CARTIER ET AL.	
	Examiner Lourdes C. Cruz	Art Unit 2815	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 1-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claims 1-20 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____.

DETAILED ACTION

This Office Action is in response to an Amendment filed April 2, 2001.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21-23,28,29,30,32-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Hotta (US Patent No. 5418179).

Regarding claims 21,28,32 and 33, Hotta discloses a semiconductor structure comprising at least a metal silicate 113 that is formed on an insulating layer 110, said layer being formed on a Si-containing substrate and having a gate electrode containing polysilicon (**claim 33**). Although Hotta fails to give specific characteristics about said insulating layer, silicon oxide is well known in the art.

Regarding claims 22,23,29 and 30 (See Col. 6, lines 45+) wherein Hotta discloses a silicide layer containing Hf.

Regarding claim 34, see that Hotta discloses a metal silicide 113 sandwiched between two conductive (electrode) materials (108,109). As for the pre-amble of the claim, a capacitor is a semi-conductor device.

Also with regard to claim 34, a product by process is recited. A "product by process" claim is directed to the product per se, no matter how actually made, In re Brown, 173 USPQ 685; In re Luck, 177 USPQ 523; In re Fessmann, 180 USPQ 324; In

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re Avery, 186 USPQ 161; In re Wertheim, 191 USPQ 90 (209 USPQ 554 does not deal with this issue); In re Marosi et al, 218 USPQ 289; and particularly In re Thorpe, 227 USPQ 964, all of which make it clear that it is the patentability of the final product per se which must be determined in a "product by process" claim, and not the patentability of the process, and that an old or obvious product produced by a new method is not patentable as a product, whether claimed in "product by process" claims or not. Note that applicant has the burden of proof in such cases, as the above case law makes clear.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hotta (US Patent No. 5418179).

Hotta discloses a semiconductor structure comprising at least a metal silicate 113 that is formed on an insulating layer 110, said layer being formed on a Si-containing substrate and having a gate electrode containing polysilicon as discussed above.

Regarding claims 25-27, the specific thickness of the claimed layers from which limitations the workable ranges of volts and capacitance density of claim 27 will depend, do not provide any critical or unexpected results to the device's operation. Rather, it is

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merely an obvious design choice determinable by routine experimentation. In *Aller*, the court stated, "Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456 105 USPQ 233,235 (CCPA 1995).

Claims **24 and 31** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hotta in view of Fujikawa et al. (US Patent No. 5306950).

Hotta discloses a semiconductor device with features discussed above. Although Hotta does not disclose a La silicate layer, Fujikawa does so, for the purpose of lowering resistivity. It would have been obvious to combine the teachings of Fujikawa to the teachings of Hotta for the purpose of obtaining a layer that provides lower resistivity, as taught by Fujikawa.

Response to Arguments

Applicant's arguments filed 4-2-01 have been fully considered but they are not persuasive. Applicant argues that Hotta fails to teach a structure including at least one metal silicate formed on a silicon oxide layer, because silicates are known in the art as insulating compounds. This argument is not persuasive because:

- See Lin et al., US 6211057, (Col. 3, lines 47-50), wherein Lin refers to "a silicate" material as one having conductive properties.
- The recitation of the term "silicate" by itself does not imply dielectric properties for artisans in the semiconductor art, see Lin et al., have attributed conductive properties to the term. Therefore, as shown

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above, silicate is not a term that is used exclusively for insulating materials and its use in a claim would not imply exclusively non-conductive material, neither does it distinguish it from the materials disclosed by the prior art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Konishi, Courreges, and Vor et al. disclose silicide layers being disposed over dielectrics.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lourdes C. Cruz whose telephone number is 707-306-5691. The examiner can normally be reached on M-F 8:00- 4:30.

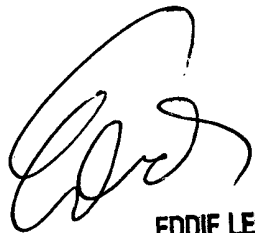
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eddie Lee can be reached on 703-308-1690. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7722 for regular communications and 703-308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

Lourdes C. Cruz
Examiner
Art Unit 2815


Lourdes Cruz
June 15, 2001


EDDIE LEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800